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December 7, 1998

VIA HAND DELIVERY

Honorable Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 – 12th Street, S.W.
TW-A325
Washington, D.C. 20554

Re: *Comments Of MGC Communications, Inc.*
CC Docket No. 98-147

Dear Honorable Salas:

Please find enclosed an original and 4 copies of MGC Communications Inc.'s Comments in the above-referenced docket. Please date stamp the extra copy and return it in the enclosed, self-addressed stamped envelope.

If you have any questions, please call me.

Sincerely,

Ross A. Buntrock

Enclosure

cc: International Transcription Services (ITS)
Chief, Competitive Pricing Division

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers	))))	CC Docket No. 98-147

COMMENTS OF MGC COMMUNICATIONS, INC.

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DECEMBER 7, 1998

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Before the
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Washington, D.C. 20554

In the Matter of Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers	))))	CC Docket No. 98-147

COMMENTS OF MGC COMMUNICATIONS, INC.

MGC Communications, Inc. ("MGC"), by its undersigned counsel, hereby submits the following comments in response to the Commission's November 5, 1998, *Public Notice*[1] in the above referenced docket in which MGC urges the Commission to reject AT&T's Petition for Declaratory Ruling ("Petition").

I. INTRODUCTION

MGC is a facilities-based competitive local exchange carrier ("CLEC") providing switched local and long distance telecommunications services to residential and small business customers in Nevada, California, Illinois, Georgia, with plans to deploy its services in Florida later this year. MGC concentrates its efforts on residential customers and is committed to offering ubiquitous competitive local services to the residential and business customers in the communities it serves.[2]

1 *Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers Pleading Cycle Established*, CCB/CPD 98-63, (Nov. 5, 1998) ("Public Notice").

2 MGC currently has an addressable line market of five (5) million in its territory.

In the *Access Charge Reform Order*,[3] the Commission decided to adopt a market-based approach to reforming access charges, rather than a prescriptive approach. In so doing the Commission reasoned that adopting a primarily market-based approach to reforming access charges will better serve the public interest than attempting immediately to prescribe new rates for all interstate access services based on the long-run incremental cost or forward-looking economic cost of interstate access services."[4] The Commission concluded that "[c]ompetitive markets are superior mechanisms for protecting consumers by ensuring that goods and services are provided to consumers in the most efficient manner possible and at prices that reflect the cost of production."[5] The Commission additionally recognized that robust competition would not take root overnight, but rather, that it would occur at different rates in different markets.[6]

Nonetheless, AT&T, in its October 23, 1998, Petition, asks the Commission to not only scrap the conclusions it recently reached in the *Access Charge Reform Order*, but also to rewrite the Telecommunications Act by dispensing with the obligations of telecommunications carriers to interconnect with the facilities and equipment of other telecommunications carriers. MGC submits that the Commission should reject as legally as factually flawed AT&T's Petition in which it asks the Commission to issue a "declaratory ruling that existing law, policy and regulation does not require IXCs to

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[3] *In re Access Charge Reform*, 12 FCC Rcd 15982 (1997) (subsequent history omitted), *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir., Aug. 19, 1998) ("*Access Charge Reform Order*").

[4] *Access Charge Reform Order* at ¶ 263.

[5] *Id.*

[6] *Access Charge Reform Order* at ¶ 266.

purchase access services from CLECs."[7] The Petition should be summarily denied on the following grounds:

- The Petition is procedurally defective. Under the rules established by the Commission a Petition for Declaratory Ruling is an inappropriate vehicle for a party that wishes to challenge terminating access rates.

- The Petition is legally deficient. AT&T's requested relief violates both the Telecommunications Act and the Commission's existing rules and policies. Moreover, AT&T's reliance on the *Capital Network* case is misplaced.

- AT&T's true objective in this proceeding is to preserve its dominance in the interstate long distance market by frustrating the development of local competition, thereby preventing Regional Bell Operating Companies ("RBOCs") from entering the interstate long distance market.

The Commission should reject both AT&T's suggestion that it prematurely abandon the course it charted in the *Access Reform Order*, as well as AT&T's faulty legal interpretations of its obligations under the Act and the Commission's rules, and instead allow market forces to guide the cost of providing access services.

II. AT&T'S PETITION IS PROCEDURALLY DEFECTIVE AND FACTUALLY INACCURATE

Despite its assertion that it is "merely ask[ing] the Commission to confirm that interexchange carriers ...are free to determine whether to deal with a CLEC" under a CLEC's tariffed rates, the reality is that AT&T's Petition is nothing more than a barely

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7 Petition at 5.

veiled attack on the rates that CLECs have established for FCC tariffed interstate switched access charges for the termination of interstate calls. The simple fact is that AT&T does not wish to originate or terminate calls upon the networks of those CLECs that AT&T unilaterally identifies as providing "unjust and unreasonable" rates for switched access. However, the procedure that AT&T has elected to use to examine the reasonableness of CLEC terminating access rates, a Petition for Declaratory Ruling under 47 C.F.R. § 1.2, is contrary to the rules set forth by the Commission to address such disputes.

In its *Access Charge Reform Order* the FCC contemplated that issues would arise regarding terminating access rates, and accordingly, the Commission established procedures whereby such grievances could be addressed. Specifically, the Commission provided in its *Access Charge Reform Order*, that when "an access provider's service offerings [allegedly] violate sections 201 or Section 202 of the Act, [the Commission] can address any issue of unlawful rates through the exercise of the [the FCC's] authority to investigate and adjudicate complaints under Section 208.[8] [R]eliance on the complaint process will be sufficient to assure that non-incumbent LEC rates are reasonable."[9]

Therefore, AT&T's Petition for Declaratory Relief is a procedurally deficient and inappropriate vehicle for AT&T to air its complaints about CLEC access rates. Pursuant to the Commission's determination in the *Access Charge Reform Order*, if AT&T wishes to challenge access rates the Commission's rules require that AT&T file a Section 208 claim against any CLEC it believes is in violation of Sections 201 and 202 of the Act.[10]

8 *Access Charge Reform Order* at ¶ 363.

9 *Id.*

10 *Id.*

In addition to its procedural deficiencies, AT&T's Petition is rife with factual inaccuracies. For example, in Appendix A of the Petition, which purports to compare ILEC and CLEC interstate access rates, AT&T cites MGC as a CLEC that charges unreasonable switched access rates in the Nevada market. Moreover, according to Appendix A, MGC competes with Nevada Bell in the provision of interstate access. However, the rates set forth in Appendix A of AT&T's Petition for MGC do not match MGC's tariffed rates for interstate switched access. In addition to misquoting MGC's rates, AT&T also misidentified the market and the competitor with whom MGC competes in Nevada.[11] MGC actually competes with Sprint in Las Vegas, Nevada, rather than Nevada Bell in Reno, Nevada. However, the factual inaccuracies in AT&T's Petition pale in comparison to the legal inaccuracies it contains.

III. THE PETITION IS LEGALLY DEFICIENT

AT&T asks the Commission to disregard both the conclusions it reached in the *Access Charge Reform Order*, as well as the requirements of the Telecommunications Act. Clearly, the Commission should reject AT&T's invitation to grant it the authority to freely to pick and choose those CLECs with whom it will pay to originate and terminate interstate calls. The action AT&T asks the Commission to take in its Petition violates both the Telecommunications Act, as well as the *Access Reform Order*.

[11] *See* Petition at Appendix A.

A. Granting the Petition Would Violate the Language and Spirit of the Telecommunications Act

Section 251 of the Act provides that "[e]ach telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[12] Clearly, Section 251(a)(1) obligations to interconnect are applicable to AT&T. That is, AT&T has a duty to connect its network either through direct connections with other carriers or through the ILEC access tandems in every market AT&T serves. Pursuant to the Act, MGC has elected to connect with AT&T through the access tandems in MGC's local service area.[13] However, granting AT&T's Petition would relieve AT&T of this basic obligation and thereby remove one of the most basic underpinnings of the Act by allowing AT&T to unilaterally exercise its discretion to choose those CLEC networks upon which it will and will not terminate traffic. Allowing AT&T, the monolith of the long distance industry, the ability to decide whether or not it will terminate traffic upon a particular CLEC's network flies in the face of the pro-competitive provisions of the Act, and should obviously be rejected out of hand by the Commission.

AT&T, until recently, was a dominant inter-exchange carrier, providing long distance telephone service to a majority of American residential consumers. However, AT&T is now a non-dominant inter-exchange carrier that is also certificated as a CLEC throughout most of the United States. According to the FCC's Second Quarter Report on

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12 47 U.S.C. § 251(a)(1).

13 *See* 47 U.S.C. §251 (a)(1).

Long Distance Market Shares, AT&T controls approximately 50% of interstate long distance minutes.[14]

Similarly, AT&T has a nearly dominant market share in long distance business. Through its Petition, AT&T is attempting to increase its market power to provide local and long distance telecommunications service by choosing those CLECs to which it will and will not terminate interstate traffic. AT&T has the resources, size, and inclination to squeeze out competitors by not allowing AT&T customers to connect their calls to selected CLECs. The selection privilege that AT&T is requesting will allow AT&T to exercise its market power over smaller CLECs in an effort to lower CLEC switched access rates. If the CLEC does not comply with AT&T's demands, then AT&T will be in a position not to deliver traffic to the CLEC. Eventually consumers who are more familiar with AT&T than the much smaller CLEC will realize that they cannot do business with AT&T unless they discontinue their business with the CLEC. As a result, the choice consumers should have in the local telecommunications arena will be limited, thus circumventing the spirit of the Act, and depriving consumers of the benefits of competition. Clearly this is not what Congress or the Commission had in mind, and the Commission should reject AT&T's Petition and uphold the pro-competitive provisions of the Act.

AT&T typically serves large business customers with dedicated facilities from the customer's premises to the AT&T switch. This configuration has allowed AT&T to avoid paying originating switched access charges since divestiture. However, AT&T has

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[14] Report available at http://www.fcc.gov/Bureaus/Common Carrier/Reports/FCC-State_Link/recent.html.

been reluctant to pass these savings along to its residential and small business customers. The effect of AT&T's Petition would make it more difficult for CLECs to provide a competitive local and long distance product to the long ignored small business and residential consumers.

Generally, small business and residential consumers do not generate the amount of telephone usage to justify a dedicated connection to AT&T. Therefore, these consumers do not gain the benefit of AT&T's dedicated access pricing. In fact, these customers will often pay the highest retail rate AT&T offers. MGC offers an alternative to small business and residential consumers that provides them with cost-effective local and long distance services. If AT&T is permitted to pick and choose those CLECs that it deems worthy of interconnection, it will have a chilling effect on the development of competition in those markets. MGC charges a switched access rate for the origination and termination of interstate calls based on its cost of accessing its customers. If AT&T is permitted to dictate to MGC what its cost recovery mechanism should be, AT&T will be in a position to exercise its market dominance to "gate" the development of local competition.

B. Granting the Petition Would Be Contrary to the Market-Based Approach Adopted by the Commission in the *Access Charge Reform Order*

When the Commission adopted its access charge reform rules in May of 1997, it found that the ILEC access charges in effect at that time were composed of a "patchwork quilt of implicit and explicit subsidies" that yielded excessive rates and impeded "the development of competition in both the local and long-distance markets."[15] In seeking to

[15] *Access Charge Reform Order* at ¶ 30.

drive these rates down to levels that reflect economic cost, the Commission adopted an approach that relied predominantly on market forces. The Commission clearly explained that the availability of unbundled network elements to competitors was critical to the development of these market forces:

> If we successfully reform our access charge rules to promote the operation of competitive markets, interstate access charges will ultimately reflect the forward-looking economic costs of providing interstate access services. This is so, in part, because Congress established in the 1996 Act a cost-based pricing requirement for incumbent LECs' rates for interconnection and unbundled network elements, which are sold by carriers to other carriers. As we have recognized, interstate access services can be replaced with some interconnection services or with functionality offered by unbundled elements. Because these policies will greatly facilitate competitive entry into the provision of all telecommunications services, we expect that interstate access services will ultimately be priced at competitive levels even without direct regulation of those service prices.[16]

In so stating, the Commission assumed that IXCs and CLECs would use unbundled ILEC network elements to gain rapid and effective entry into local markets. These carriers presumably would use unbundled network elements to provide transport and termination functions to their end user customers, and would use these facilities and functionalities to sell competing services to other carriers. The Commission envisioned that both applications would yield competitive alternatives to ILEC access services, and would generate market forces strong enough to drive ILEC access charges to economic cost over time. Given these assumptions, the Commission found that the availability of

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16 *Access Charge Reform Order* at ¶ 262.

market forces made a more regulatory approach unnecessary, and removed the need to prescribe reductions in ILEC access charges.[17] The Commission reasoned that:

> adopting a primarily market-based approach to reforming access charges will better serve the public interest than attempting immediately to prescribe new rates for all interstate access services based on the long-run incremental cost or forward-looking economic cost of interstate access services. Competitive markets are superior mechanisms for protecting consumers by ensuring that goods and services are provided to consumers in the most efficient manner possible and at prices that reflect the cost of production. Accordingly, where competition develops, it should be relied upon as much as possible to protect consumers and the public interest. In addition, using a market-based approach should minimize the potential that regulation will create and maintain distortions in the investment decisions of competitors as they enter local telecommunications markets.

Access Charge Reform Order at ¶ 263. The Commission was correct when it concluded that a market-based determination of access rates will best achieve the pro-competitive goals of the Telecommunications Act. Moreover, the Commission "acknowledge[d] that a market-based approach under this scenario may take several years to drive costs to competitive levels."[18] The AT&T Petition asks the Commission to scrap the determinations it made in the *Access Charge Reform Order*, even though competition has barely begun to take root. According to the FCC's most recent report on local competition, CLECs have less than 5% of the local market as of third quarter 1998.[19] ILEC roadblocks have increased the cost and availability of unbundled network elements and have attempted to thwart competition at every turn. Nonetheless, CLECs such as MGC have persevered and are beginning to succeed. Therefore, the Commission should

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17 *Access Charge Reform Order* at ¶ 263.

18 *Access Charge Reform Order* at ¶ 45.

not prematurely abandon the market-based approach it adopted in the *Access Charge Reform Order*. Clearly, if the Commission were to grant the relief sought by the AT&T Petition, the emerging competitive market beginning to take shape would be quashed. Moreover, besides being contrary to the access rules and policies enunciated by this Commission, the AT&T Petition is built on a foundation made of sand. That is, the legal authority upon which the AT&T Petition is premised clearly does not support granting the relief requested by AT&T.

C. AT&T's Reliance on *Capital Network* is Misplaced

The thin reed upon which AT&T rests its case is the inapplicable holding of *Capital Network System, Inc. v. FCC* (1994) 28 F.3d 201 (D.C. Cir. 1994) ("*Capital Network*"). AT&T's reliance upon this case is misplaced. AT&T, in an incredible leap of logic, contends that *Capital Network* stands for the proposition that "a 'customer' for a tariffed service must be a party that affirmatively requests and receives a service."[20] It is the Commission's no longer prevailing definition of "customer" that AT&T relies upon in its Petition.[21] AT&T's Petition fails to address the fact that under the Commission's reinterpretation of "customer" in *United Artists Payphone Corp.*, 8 FCC Rcd 5563 (1993) ("*United Artists*") a carrier-customer relationship can be constructively established.

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19 *Local Competition, available at http:* www.fcc.gov/ccb/stats *LCOMP98.PDF* (Dec. 4, 1998).

20 Petition at 7.

Capital Network was decided on very narrow grounds. The court merely denied a petition to review a Commission decision to reject a proposed interstate common carrier transfer service tariff as patently invalid. In so doing, the *Capital Network* court upheld the Commission's decision below, which found that the proposed tariff was unreasonable under section 201 of the Act because it automatically charged an entity for services it had not ordered and may not have received, and was also unclear and ambiguous under FCC rules. The *Capital Network* court accepted the Commission's representation of its then-prevailing interpretation of "customer"—a party that affirmatively requests and receives a tariffed service—to find that Capital's tariff was patently null.[22]

The *Capital Network* case is limited to its facts which are vastly different than the circumstances to which AT&T would apply them now. First, Capital Network was an IXC that did not own any of its own facilities on which to originate or terminate interstate calls to end users.[23] Therefore, Capital had no way to verify whether it had completed the calls it directed to AT&T.[24] In addition, Capital was attempting to recoup the minute of use charge it incurred from using the ILEC switch to deliver calls to AT&T.[25] Because the Commission could not verify whether calls were actually completed to AT&T, and because Capital's switched access tariff was deemed unreasonable <u>by the Commission</u>, AT&T was held not to be responsible to pay Capital's interstate switched access fees.

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21 *See* Petition at 7.
22 *Capital Network* at 205.
23 *Capital Network* at 203.
24 *Capital Network* at 204.
25 *Capital Network* at 203.

In contrast, MGC is a facilities-based CLEC that has placed its own switches and collocated equipment in the markets that it serves. Moreover, MGC has the capability in its switches to document when an interstate long distance call has been originated or terminated on its switch, which allows MGC to provide IXCs with detailed call records when it bills IXCs for interstate switched access. Further, MGC does not charge more for its interstate switched access to IXCs than is provided for in MGC's FCC approved interstate switched access tariff. Clearly, *Capital Network* does not support the Commission taking the action urged by AT&T.

Inexplicably, however, AT&T argues that *Capital Network* somehow allows AT&T to avoid paying access charges pursuant to unchallenged and legally supported CLEC tariffs. AT&T's Petition raises no issue regarding the clarity or ambiguity of MGC's or any other CLEC's tariff. Nor does AT&T contend, like the *Capital Network* tariff, that MGC's tariff charges AT&T for services that does it not receive. AT&T does receive a service for the tariffed charges it pays CLECs: the origination and termination of AT&T calls that utilize the CLEC's facilities-based network. To the extent that AT&T disagrees with the terminating access charges being levied by CLECs, its remedy is to utilize the Commission's complaint procedures as set forth in the *Access Charge Reform Order*.

AT&T fails to address the application of the constructive ordering doctrine, established in *United Artists*. In *United Artists*, the Commission recognized that "presubscription is not the only way to 'order' service from a carrier and thus become a 'customer.'"[26] The Commission found that if a pay phone provider failed to take steps to

[26] *United Artists* at ¶ 13.

control unauthorized services and had, instead installed its equipment in such a way as to allow callers to charge such calls, the pay phone provider could reasonably be held to have constructively "ordered" service, thus establishing an inadvertent carrier-customer relationship.[27] In *United Artists*, the Commission held that the pay phone provider did take reasonable steps to prevent unauthorized access to AT&T's network, and therefore was not found to have constructively "ordered" service from AT&T.

In its *Capital Network* decision, the FCC declined to apply the *United Artists* "constructive ordering" doctrine for two reasons: (1) the constructive ordering doctrine, as set forth in *United Artists*, was not in force at the time of the tariff filing at issue in *Capital Network*; and (2) even had the constructive ordering doctrine been in effect at the time of the *Capital Network* tariff filing, it would not have altered the inherent illegality of the tariff.

Under the existing set of facts, AT&T should be treated as a constructive purchaser of services from MGC. AT&T has chosen not to implement its own facilities-based local network, therefore, AT&T must purchase access from the networks of other carriers such as MGC. While it may be true that AT&T does not choose the particular local exchange carrier that originates and terminates its customers' long distance calls, AT&T does nonetheless, utilize the local exchange networks of many CLECs, in those instances where AT&T's customers have exercised their right to choose their local exchange carrier pursuant to the Telecommunications Act. Of course, the access rates will vary due to the differing costs of the carrier networks with which AT&T interfaces.

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[27] *United Artists* at ¶ 13.

As the Commission recognized in the *Access Charge Reform Order*, "the public interest is best served by permitting emerging competition to shape access charge rate levels."[28]

Again, MGC submits that AT&T's Petition constitutes a wholly inappropriate and unfounded attack on the well-reasoned access charge regime established by this Commission. AT&T's appropriate remedy is to dispute those access termination rates through the Commission's Section 208 complaint procedures.[29] Until such time as AT&T pursues the appropriate avenues to seek redress for its complaints, the tariffs of MGC and other CLECs govern the rights and liabilities between those CLECs and AT&T.

D. Under the Filed Rate Doctrine the Terminating Access Rates That AT&T Challenges in its Petition Are Governed by Lawfully Filed Tariffs

Pursuant to MGC's effective tariffs, MGC has the authority to submit an interstate switched access bill to IXCs that have originated or terminated interstate long distance calls on its facilities. MGC filed its interstate switched access tariff with the FCC and has amended it several times. "Tariffs filed with the Commission "conclusively and exclusively control the rights and liabilities" between AT&T and MGC in connection with AT&T's obligation to pay access charges.[30] AT&T has, and continues to terminate long distance traffic on MGC's network, and therefore, must pay the access rates set forth in the MGC tariff. Under the filed rate doctrine, which is codified at 47 U.S.C. § 203(c), "carriers are specifically forbidden from charging or collecting different compensation that specified in an effective tariff. Tariffs which are administratively valid operate to

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28 *Access Charge Reform Order* at ¶ 269.

29 *Access Charge Reform Order* at ¶ 363.

30 *MCI Telecommunications Corp. v. Graham*, 7 F.3d 477, 479 (6th Cir. 1993).

control the rights and liabilities between the parties. Rates published in such tariffs are imposed by law."[31]

Therefore, under the filed rate doctrine and the mandates of contract law, MGC has validly charged IXCs for the origination and termination of interstate long distance calls that are completed on MGC facilities until such time as this Commission makes a specific determination to the contrary. As the court in *Pay Phone Concepts v. MCI Telecommunications*, 94 F.Supp. 1202 (D. Kan. 1995) pointed out: "It matters not whether the customer assents, for the filed tariff controls the obligations and rights between the carrier and customer."

IV. AT&T IS ATTEMPTING TO HINDER RBOC ENTRY INTO THE LONG DISTANCE MARKET BY FRUSTRATING THE EMERGENCE OF LOCAL COMPETITION.

Section 271 of the Act requires that RBOCs comply with a 14 point checklist before they are allowed to compete in the long distance market.[32] Presumably, once this 14 point checklist is met, local competition exists, and RBOCs will be permitted to offer interLATA and interstate telecommunications services to their existing local customer base. One factor in determining whether competition exists is the existence of facilities-based residential competitors. To date, the FCC has not granted 271 certification to any RBOC.[33] AT&T desires to maintain the approximately 50% share of the interstate long

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31 *Cincinnati Bell Tel. Co. v. Allnet Communication Services, Inc.*, 17 F.3d 921 924 (6th Cir. 1994). *See also Reiter v. Cooper,* 113 S.Ct 1213, (1993); *Maislin Industries, U.S., Inc., v. Primary Steel, Inc.*, 110 S.Ct. 2759, 2762 (1990); *Southern Pacific Transp. Co. v. Commercial Metals, Inc.*, 102 S.Ct. 1815, 1825 (1982).

32 *See* 47 U.S.C. § 271(c)(2)(B).

33 *See Application by SBC Communications, Inc. Pursuant to Section 271 of the Telecommunications Act of 1934, as amended To Provide In-Region, InterLATA Services in Oklahoma*, 12 FCC Rcd 8685 (1997); In *the Matter of the Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20543 (1997); *Application of BellSouth Corporation et al. Pursuant to Section 271 of the*

distance business that it now enjoys, and to do so it has chosen to frustrate local competition by targeting CLECs. Meanwhile, AT&T continues to enter the local market throughout the country as a reseller.[34] AT&T should not be permitted to implement this strategy at the grave risk of severely hampering the development of both local and long distance competition.

Access prices will diminish over time, but only after competition exists in the local market. As discussed above, competition in the local market will be seriously impeded if AT&T is granted its request to pick and choose which CLECs it wishes to pay to originate and terminate interstate long distance traffic. Once, RBOCs are allowed to offer interLATA and interstate long distance services, the price for originating and terminating long distance calls will be greatly reduced.

As the FCC and the telecommunications industry have recognized, a portion of interstate switched access charges are a subsidy granted to facilities-based local exchange carriers to facilitate the implementation and provision of Universal Service.[35] Additionally, local exchange carriers are permitted to charge IXC's just and reasonable access fees to originate and terminate interstate calls to assist the carrier's recovery costs of building out their local networks.

Telecommunications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina, 13 FCC Rcd 539 (1998); *Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Telecommunications Act of 1934, as amended To Provide In-Region, InterLATA Services in Louisiana,* 13 FCC Rcd 6245 (1998) ("*First BellSouth Louisiana Order*"); *Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Telecommunications Act of 1934, as amended To Provide In-Region, InterLATA Services in Louisiana*, CC Docket 98-121 (Oct. 13, 1998) ("*Second BellSouth Louisiana Order*").

[34] Only facilities-based CLECs are allowed to collect switched access revenues to compensate for IXC access to their local networks. CLEC resellers are not entitled to switched access revenue because they merely resell the ILEC's local service. Therefore, AT&T believes that the ILEC's switched access rates should be a benchmark because that is what ILEC's charge AT&T for resold local customers.

Many CLECs (including MGC) have only been in existence since the advent of the Act. CLECs that have filed tariffs that have been accepted by the Commission providing for interstate switched access charges for the origination and termination of interstate calls should be allowed to collect the tariffed rate from IXCs that have either directly or indirectly accessed the CLECs local network. Furthermore, IXCs such as AT&T ultimately benefit by gaining access to CLEC customers that the IXC may not have obtained but for the CLEC. Additionally, IXCs always bill their end-users and collect a fee for allowing their customer to make a call to the CLEC customer. The IXC charges its customer whether or not the IXC has a direct or indirect connection to the CLEC's local network.

The FCC should deny AT&T's Petition and allow the emerging competitive marketplace to dictate prevailing switched access rates. Furthermore, the FCC should require AT&T to comply with the FCC's mandate and pursue relief in the proper forum.

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[35] *Access Charge Reform Order* at ¶ 34-41.

V. CONCLUSION

For the foregoing reasons, the FCC should deny AT&T's Petition for Declaratory Relief and order AT&T to pay CLECs their tariffed interstate switched access rates every time AT&T originates and terminates interstate long distance calls on a facilities-based CLEC's network.

Respectfully submitted,

MGC COMMUNICATIONS, INC.

By: ______________________

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Comments of MGC Commission, Inc." were served this 7th day of December, 1998, by hand, on the following:

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